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by Code 1904, § 603, and the Supreme Court has no power to relieve a taxpayer from such penalty.

Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 185.]

Appeal from Circuit Court, Culpeper County.

Petition by John F. Rixey's executors against the Commonwealth and the Board of Supervisors of Culpeper County, Va., for relief from assessments on intangible property of the estate for state and local taxes for certain years. From a denial of their petition, the executors appeal. Amended, affirmed, and remanded.

John S. Barbour, of Fairfax, and *J. G. Hiden*, of Culpeper, for appellants.

John R. Saunders, Atty. Gen., and *O. L. Shumake*, of Richmond, for appellees.

LAVENSTEIN BROS. v. HARTFORD FIRE INS. CO.

June 12, 1919.

[99 S. E. 579.]

1. Insurance (§ 665 (1)*)—Fire Insurance—Inventory—Sufficiency of Evidence.—In action on fire policy insuring stock of goods, evidence held to show that inventory taken February 1st did not include purchases by insured during preceding January.

2. Insurance (§ 335 (2)*)—Fire Insurance—Inventory—Sufficiency.—The taking of an inventory on February 1st, without including purchases by insured during preceding January, was not a violation of fire policy requiring a complete itemized inventory of stock on hand, where the invoices of all such purchases were preserved in an invoice book, and were shown in detail as fully as would have been shown by inventory.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 85, 102.]

3. Insurance (§ 335 (2)*)—Fire Insurance—Inventory of Stock of Goods—"Complete Itemized Inventory."—Fire policy, requiring insured to make "complete itemized inventory of stock on hand," did not require insured, in making inventory, to record the stock numbers of the items of goods or other data touching the identity of the items, in order that such goods could be traced to the former inventories, to invoices of them, or the like.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Inventory. For other cases, see 6 Va.-W. Va. Enc. Dig. 85, 102.]

4. Insurance (§ 335 (2)*)—Fire Insurance—Inventory—Stock of Goods.—Under fire policy requiring insured to make a complete

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

itemized inventory of stock of goods on hand, inventory grouping goods of different kinds in one item designated as dress goods, at certain prices per yard, was not invalid, where the goods were of the same value per yard, and existed in the quantity stated in inventory.

5. Insurance (§ 335 (2)*)—Fire Insurance—Stock of Goods—Inventory.—Inventory of stock of goods taken pursuant to fire policy, in an amount more than \$90,000, was not invalid because of lumped entries, such as "1 lot jewelry, \$10.00," where such entries were few in number.

6. Appeal and Error (§ 204 (1)*)—Objections to Evidence—Waiver.—Objections to admission of evidence will be treated as waived in appellate court, where not raised in lower court.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 560.]

7. Insurance (§ 335 (2)*)—Fire Insurance—Inventory—Branch Store.—Fire policy on stock of goods, requiring insured to take inventory of the goods, did not require insured to take inventory of stock of goods in a branch store in another city, conducted as a separate line of business, where such stock of goods was not covered by the policy.

8. Insurance (§ 335 (3)*)—Fire Insurance—Stock of Goods—Books of Insured.—Fire policy on stock of goods, requiring insured to take inventory and keep a "set of books which shall clearly and plainly present a complete record of the business transacted, including all purchases, sales, and shipments * * * from date of inventory," did not require insured's books to record the original purchases of all goods at the branch stores of the insured for period of time preceding taking of inventory, but merely such books as show record of business transacted from date of inventory.

9. Insurance (§ 665 (3)*)—Fire Insurance—Books of Insured—Sufficiency of Evidence.—In action on fire policy, evidence held to show that insured complied with provision of policy requiring them to keep a set of books clearly and plainly presenting a complete record of business transactions from date of inventory.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 102.]

10. Insurance (§ 660*)—Fire Insurance—Profits of Insured.—In action on fire policy on stock of goods requiring insured to take inventory and keep books showing business transacted from date of inventory, insured was not required to show profits for a year preceding the taking of inventory, by books for such period, but could establish such profits by any competent evidence.

11. Insurance (§ 330 (2)*)—Fire Insurance—Stock of Goods—Chattel Mortgage—Collateral Security Note.—Insured's note, in the

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

usual form of a negotiable collateral security note, did not violate provision of policy making policy void upon incumbering goods with chattel mortgage; such note being insufficient to create a chattel mortgage.

12. Insurance (§ 328 (6*))—Fire Insurance—Ownership of Goods—“Unconditional and Sole Ownership.”—Insured’s note, in the usual form of a negotiable collateral security note, making stock of goods covered by policy collateral for payment of note, did not invalidate policy under provision making it void if the interest of insured in goods be other than “unconditional and sole ownership”; the execution of such note not depriving insured of the unconditional and sole ownership of the property, even though note should be construed as creating a chattel mortgage.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Unconditional and Sole Ownership. For other cases, see 6 Va.-W. Va. Enc. Dig. 78.]

13. Insurance (§ 553 (1*))—Fire Insurance—Proof of Loss—False Statements.—False swearing in proof of loss, to forfeit policy, must consist in an oath to statements knowingly and willfully false or recklessly made.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 77.]

14. Trial (§ 114*)—Demurrer to Evidence—Argument to Jury.—Where defendant has demurred to the evidence, it will not be permitted to argue to jury that it is not bound by the legal effect of the demurrer.

15. Trial (§ 178*)—Demurrer to Evidence—Admissions.—By demurring to evidence, defendant waives its evidence in conflict with plaintiff’s evidence, and admits truth of plaintiff’s testimony and all reasonable inferences that may be drawn therefrom.

Burks, J., dissenting.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 522.]

Error to Hastings Court of Petersburg.

Action by Lavenstein Bros. against the Hartford Fire Insurance Company. Judgment of dismissal, and plaintiffs bring error, and defendant assigns cross-error. Reversed.

R. H. Mann, of Petersburg, and *Henry J. Wyatt*, of New York City, for plaintiffs in error.

Caskie & Caskie, of Lynchburg, and *R. E. Scott*, of Richmond, for defendant in error.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.